

**DISTRICT OF COLUMBIA
DOH OFFICE OF ADJUDICATION AND HEARINGS**

DISTRICT OF COLUMBIA
DEPARTMENT OF HEALTH
Petitioner,

v.

LITTLE IMPRESSION CHILD DEVELOPMENT
CENTER and PATRICIA DOUGLAS
Respondents

Case No.: I-00-40942
I-00-40465

FINAL ORDER

I. Introduction

On December 31, 2001, the Government served a Notice of Infraction upon Respondents Little Impression Child Development Center and Patricia Douglas alleging that they violated three regulations governing the operation of child development centers: 29 DCMR 315.4, which prescribes the qualifications for teachers at child development centers; 29 DCMR 316.2, which requires each group at a center to be supervised by both a teacher and an assistant teacher during “peak hours” (*i.e.*, between 8:30 AM and 4:30 PM); and 29 DCMR 315.2(e), which requires the director of the center to designate a teacher to be responsible in the director’s absence. The Notice of Infraction alleges that the violations occurred on December 4, 2001 at 2613 30th Street, S.E. It sought a fine of \$500 for the violations of §§ 315.4 and 316.2, and a fine of \$50 for the violation of §315.2(e), a total of \$1050.

Respondents did not file an answer to the Notice of Infraction within the required twenty days after service (fifteen days plus five additional days for service by mail pursuant to D.C. Official Code §§ 2-1802.02(e), 2-1802.05). Accordingly, on February 19, 2002, this administrative court issued an order finding Respondents in default, assessing the statutory penalty of \$1050 required by D.C. Official Code § 2-1801.04(a)(2)(A), and requiring the Government to serve a second Notice of Infraction.

On March 4, 2002, Respondents filed a plea of Admit with Explanation, using the yellow service copy of the Notice of Infraction form, but without any accompanying explanation. The Government served the second Notice of Infraction on March 6, 2002, and Respondents filed an explanation for their violations on March 22, 2002, seeking suspension or reduction of the applicable fines. On April 5, 2002, I issued an order permitting the Government to reply to Respondents' plea and request within 14 days. That deadline has passed without a response from the Government.

II. Summary of the Evidence

Respondents admit that the violations occurred. They state that their two teachers had both called in sick on the day the inspector visited their facility. They also state that the facility's director was out "doing our shopping" and attending a doctor's appointment when the inspector visited. They further state that the director could not designate a teacher to be responsible in her absence because both teachers were out sick. Respondents have not provided any explanation for their failure to file a timely response to the first Notice of Infraction.

III. Findings of Fact

Respondents' plea of Admit with Explanation establishes that, on December 4, 2001, they did not have a qualified teacher on duty at the facility, that each group of children was not supervised by both a teacher and an assistant during peak hours and that the director of the center did not designate a qualified teacher to act in her absence. The violations occurred because two teachers were out sick and because the director left the center to do shopping and to attend a doctor's appointment. Respondents do not have a history of prior violations, but they have not described any efforts they have made to prevent future violations.

Because Respondents used the service copy of the first Notice of Infraction to file their plea, it can not be disputed that they received that Notice of Infraction. Respondents have offered no explanation for their failure to file a timely response to the Notice of Infraction.

IV. Conclusions of Law

Respondents' plea of Admit with Explanation establishes that they violated 29 DCMR 315.4, 316.2, and 315.2(e) on December 4, 2001. The fine for a first violation of §§ 315.4 and 316.2 is \$500 for each violation. 16 DCMR 3221.1 (g) and (i). The fine for a first violation of § 315.2(e) is \$50. 16 DCMR 3221.3.

This record does not present any justification for reducing the fines due to the illness of the teachers. The regulations at issue contain specific requirements concerning the number and qualifications of responsible adults who must be present to supervise the children entrusted to the care of a child development center. Therefore, a child development center must plan for the likelihood that staff members occasionally may be absent if it wishes to remain open on such

occasions. *DOH v. Growing Seeds Child Development Center*, OAH No. I-00-40041 at 2 (Final Order, May 16, 2000). Respondents have not offered any evidence that they had a plan in place to deal with teachers' absences or that they have adopted such a plan after issuance of the Notice of Infraction. *Compare Growing Seeds, supra* at 2-3 (Fine reduced in light of Respondents' specific efforts to plan for possible future absences of staff members.) Indeed, the director exacerbated the shortage of qualified staff members by leaving the facility when it was understaffed.¹ Because there is no evidence that Respondents have a history of prior violations, however, I will reduce the fines for the § 315.4 and § 316.2 violations to \$425 each. I will not reduce the \$50 fine for the § 315.2 violation in light of the deliberate nature of the director's actions. The total fine amount, therefore, will be \$900.

The Civil Infractions Act, D.C. Code Official Code §§ 2-1802.02(f) and 2-1802.05, requires the recipient of a Notice of Infraction to demonstrate "good cause" for failing to answer it within twenty days of the date of service by mail. If a party does not make such a showing, the statute requires that a penalty equal to the amount of the proposed fines must be imposed. D.C. Official Code §§ 2-1801.04(a)(2)(A) and 2-1802.02(f). Because Respondents have offered no evidence of the reasons for their failure to file a timely answer, there is no basis for reducing the penalty required by law. Accordingly, Respondents must pay a penalty of \$1050 in addition to the fines.

¹ Respondents did not explain why the shopping could not be delayed in light of the shortage of staff members, nor did they provide any evidence that the director's doctor's appointment could not be postponed.

V. Order

Based upon the foregoing findings of fact and conclusions of law, it is, this _____ day of _____, 2002:

ORDERED, that Respondents, who are jointly and severally liable, shall pay a total of **ONE THOUSAND NINE HUNDRED FIFTY DOLLARS (\$1,950)** in accordance with the attached instructions within twenty (20) calendar days of the mailing date of this Order (15 days plus 5 days service time pursuant to D.C. Official Code §§ 2-1802.04 and 2-1802.05); and it is further

ORDERED, that if Respondents fail to pay the above amount in full within twenty (20) calendar days of the date of mailing of this Order, interest shall accrue on the unpaid amount at the rate of 1 ½% per month or portion thereof, starting from the date of this Order, pursuant to D.C. Code Official Code § 2-1802.03 (i)(1); and it is further

ORDERED, that failure to comply with the attached payment instructions and to remit a payment within the time specified will authorize the imposition of additional sanctions, including the suspension of Respondents' licenses or permits pursuant to D.C. Official Code § 2-1802.03(f), the placement of a lien on real and personal property owned by Respondents pursuant to D.C. Official Code § 2-1802.03(i) and the sealing of Respondents' business premises or work sites pursuant to D.C. Official Code § 2-1801.03(b)(7).

/s/ **05/15/02**

John P. Dean
Administrative Judge